

APPENDIX D

Municipal Service Agreement

CERTIFIED

FIRST AMENDED MUNICIPAL SERVICES AGREEMENT

This First Amended Municipal Services Agreement ("Agreement") is made this 21 day of AUG 2006, by and between the City of Barstow ("City") and the Los Coyotes Band of Cahuilla and Cupeño Indians ("Tribe"), and is founded upon the following Recitals:

RECITALS

WHEREAS, by an act of January 4, 1975, Congress enacted the Indian Self-Determination Act, 25 U.S.C. § 450, *et seq.*; and

WHEREAS, Congress has authorized the United States Secretary of the Interior to acquire land in trust for the Tribe in order for the Tribe to achieve economic self-sufficiency; and

WHEREAS, following consultations with state and City officials for the purpose of identifying potential new trust land acquisitions that would meet the community and economic development needs of the Tribe, while being compatible with surrounding land uses and minimizing adverse impacts on City services and residents, the Tribe has selected and will acquire a parcel of land in the City; and

WHEREAS, the Tribe and the Governor of California have executed a Tribal-State Compact ("the Compact") that allows for the Tribe's casino project on that parcel of land, recognizes and provides for an intergovernmental agreement between the Tribe and the City such as this Agreement, allows for a deduction in the Tribe's required payments to the State for certain payments made by the Tribe to the City, includes a comprehensive framework for reviewing and mitigating off-reservation environmental and economic impacts, and regulates public and workforce health and safety and other aspects of gaming by the Tribe; and

WHEREAS, the Tribe has filed with the Department of Interior, Bureau of Indian Affairs ("BIA") a fee-to-trust application and request for two-part determination pursuant to and in accordance with the provisions of Section 5 of the Indian Reorganization Act, 25 U.S.C. § 465, the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, *et seq.* ("IGRA"), and the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.* ("NEPA"), requesting that the United States accept trust title ("fee-to-trust application") to a parcel in the City ("Trust Lands") and that the Secretary issue a two-part determination that the Tribe's proposed trust acquisition and gaming development is in the best interest of the Tribe and not detrimental to the surrounding community pursuant to Section 20(b)(1) of IGRA; and

WHEREAS, the Tribe has requested that the City support the Tribe's fee-to-trust application, and has offered to enter into this Agreement with the City before any land goes into trust, which Agreement provides for cooperation between the Tribe and the City on matters of public services and land use on the Tribe's Trust Lands, as well as compensation to the City for the impact on City services of the Tribe's use of Trust Lands; and

WHEREAS, the City is capable of providing, and willing to provide, a full range of municipal services for uses of the Tribe's Trust Lands; and

WHEREAS, the City is prepared to support the Tribe's fee-to-trust application if the Tribe enters into this Agreement and comprehensively mitigates environmental impacts of this acquisition by taking several steps, including, but not limited to: (a) conforming to the Barstow Municipal Code; (b) mitigating any environmental impacts of its planned use of the Trust Lands that are identified in the environmental review to be conducted pursuant to the Compact and federal laws; (c) compensating the City for public services and utilities to be provided on the Tribe's Trust Lands; and (d) paying development and processing fees; and

WHEREAS, the terms and conditions of this Agreement are designed and intended to evidence the goodwill and cooperation of the Tribe and the City in fostering a mutually respectful government-to-government relationship that will serve their mutual interests.

NOW, THEREFORE, the Parties agree as follows:

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Section 1. Land to be Taken into Trust.

The Tribe has requested that the United States take into trust for its benefit land approximately 23.1 acres in size as identified in Exhibit A appended hereto ("Trust Lands"). The Tribe agrees that it will not seek other or additional parcels within the City to be taken into trust unless and until this Agreement is amended as provided herein to authorize additional trust land acquisition(s). The Tribe further agrees to use the Trust Lands exclusively for: (a) the development and operation of Gaming facility, which will offer Class III gaming and may offer Class II gaming, as defined in IGRA, and other facilities ("Resort" as defined in Exhibit B), in conformity with the requirements of IGRA, with the requirements of this Agreement and with the requirements of all other applicable state and federal laws; and (b) other gaming-related uses as described in Exhibit B, so long as such related uses are intended primarily to facilitate the operation of the Resort.

Section 2. Compliance with City Ordinances.

The Tribe shall enact laws applicable to the Trust Lands and shall require that all tribal development projects occurring on the Trust Lands be used and developed in a manner that is consistent with the Barstow Municipal Code (incorporated herein by reference) in effect at the time of any project development. The Tribe shall adopt building standards and codes no less stringent than those adopted by the City and prior to the use of any structure constructed on the Trust Lands, provide the City, at the Tribe's expense, written certification from the project's architect of record that said structures have been constructed in accordance with said standards and code provisions. To ensure compliance with the City's adopted codes including those pertaining to building standards, the Tribe agrees to contract with the City to provide planning, building and safety, fire prevention, and public works personnel to review any and all construction plans and inspect construction of all improvements on or off the Trust Lands. The City shall, to the extent consistent with State law, keep such construction plans confidential in light of the interest of the Parties in maintaining the security of the casino facility.

Section 3. Environmental Review.

The Tribe will adopt an ordinance providing for the preparation, circulation, and consideration by the City, of detailed environmental reports concerning environmental impacts of tribal development projects on Trust Lands to be commenced on or after the effective date of this Agreement. In fashioning the environmental protection ordinance, the Tribe's ordinance will be consistent with the policies and purposes of the California Environmental Quality Act ("CEQA") notwithstanding that CEQA does not apply to the sovereign Trust Lands, which are governed by the Tribal-State Compact under federal law. All such environmental reports shall be provided to the City not less than 120 days prior to the commencement of any development.

The Tribe shall consult and cooperate with the City to develop site- and project-specific terms and conditions and shall act in compliance with NEPA and in a manner consistent with the policies and purposes of CEQA as required by the Compact to mitigate impacts stemming from tribal development on Trust Lands.

As of the date of this Agreement, there are no planned tribal development projects off the Trust Lands. The Parties understand and agree that the Tribe may in the future undertake other development projects off Trust Lands, to which CEQA shall apply. Additionally, in order to preserve their good relations and in the best interests of the surrounding community, the Tribe agrees to follow the process and procedures outlined in Section 2 of this Agreement before undertaking any construction off Trust Lands which requires a permit under Title 15 of the Barstow Municipal Code.

Section 4. Police and Fire Personnel and Services.

The Parties recognize and agree that the Resort to be developed and operated on Trust Lands by the Tribe will necessitate an increased presence of police and fire personnel.

The City agrees to provide 24-hour police and fire suppression personnel and services to the Tribe at the same levels as provided to the City and its residents, except as provided herein and in Exhibits G (Police) and H (Fire) appended hereto.

Consistent with federal law, police services shall include the authority to enforce any and all state and local criminal laws and ordinances on Trust Lands, which shall include, but not be limited to, 24-hour patrol services and response to emergency 911 calls, and general investigations for major crimes as the Barstow Police Department deems necessary.

When practical, the Police Department will attempt to notify the Tribe's designated public safety or security director and shall coordinate and cooperate with designated casino security force personnel, if any, except when, in the judgment of the law enforcement officers involved, their safety, the safety of the public, or the integrity of an investigation or enforcement action, would be compromised by doing so.

Whenever the Tribe schedules a Special Event on the Trust Lands which is anticipated to require law enforcement personnel above the level of staffing called for in this Agreement, the Parties will negotiate appropriate additional reasonable compensation to the City to cover the additional costs incurred by the City as a result of the Special Event.

All persons employed in the performance of law enforcement and fire service related functions pursuant to this Agreement shall be employees or contractors of the City, other public safety agencies having primary jurisdiction within the City, or agencies which have mutual aid agreements with the City when responding to a request for services under this Agreement.

A. **Barstow Police Personnel.** In order to satisfy its law enforcement duties under this Agreement:

1. The Tribe shall utilize its best efforts to reach a contract directly with the County of San Bernardino for prosecutorial and defense services (District Attorney/Public Defender), and costs for such services shall be paid by the Tribe directly to the County. If the Tribe is unable to reach terms with the County for prosecution and defense services, then the Parties shall conduct further negotiations regarding provision of such services to the Tribe. Failure of the Parties to reach agreement shall constitute grounds for invocation of the Dispute Resolution provisions of this Agreement. Notwithstanding any other provision of this Agreement, gaming operations shall not commence at the Resort until resolution and agreement of the Parties concerning the provision of prosecutorial and defense services.
2. The City and the Police Department shall enforce state penal laws and City penal ordinances within the boundaries of the Trust Lands and the Resort's facilities to the full extent that City is authorized under California law, the Compact and this Agreement to exercise its police power.

B. **Barstow Fire Protection District Personnel.** The Tribe recognizes that additional fire protection and emergency response services will be required by the Resort. The scope of said services will be detailed in the environmental assessment or environmental impact statement materials submitted to the United States Department of the Interior in conjunction with its fee-to-trust application. To accommodate the anticipated added burdens, the Parties agree to the following:

1. The City shall purchase a fully equipped Emergency Medical Services Response Vehicle, which shall be housed at Station 363 located at 2600 West Main Street, Barstow, CA, for the first two years of Resort operations. If the Tribe is the first tribe to commence Resort Operations on the Trust Lands or trust parcels adjacent thereto, at the beginning of year three of Resort operations, the Tribe shall pay to the City a sum equal to 100 percent of the cost of the EMS Response Vehicle. If another tribe is the first tribe to commence Resort operations on the Trust Lands or trust parcels adjacent thereto, at the beginning of year three of Resort operations on the Trust Lands, the Tribe will reimburse the first tribe to commence Resort operations on the Trust Lands a sum equal to 50 percent of the cost of the EMS Response Vehicle. The cost of such vehicle shall be no more than \$225,000, which sum shall be increased annually in accordance with the applicable section of the

Consumer Price Index for the greater Los Angeles Metropolitan Statistical Area ("CPI"), which increase calculation shall commence as of the month in which this Agreement is executed.

2. The equipment and personnel to be utilized by the Barstow Fire Protection District in responding to emergencies at the Resort will depend on the facilities constructed by the Tribe. To respond more effectively to high-rise emergencies at any structure on the Trust Lands of more than one floor but no more than four floors, the Barstow Fire Protection District will relocate its ladder fire truck from station 361 located at 861 Barstow Road, Barstow, CA to Station 363 located at 2600 West Main Street, Barstow, CA for the first two years of the Resort's operation. If and when the City constructs a new fire station, and there is a structure on the Trust Lands of more than four floors, the Barstow Fire Protection District will relocate a fire engine at the station nearest the Resort, if necessary.
3. The Barstow Fire Protection District and the City have advised that a ladder truck is not typically used to fight a fire on a building more than four stories in height; rather, such a high rise fire requires entry by Fire Department personnel and personal action at the burning site. If a structure exceeding four stories in height is constructed by the Tribe on Trust Lands, the Tribe will pay one half (1/2) of the actual costs of training Fire District personnel to fight high-rise fires, and the Fire Protection District estimates the cost of such training will be approximately \$47,000.

C. Fire and Police Structures.

If the Tribe is the first tribe to commence gaming operations on the Trust Lands or trust parcels adjacent thereto, as soon as practicable when requested by the City, which request may be made at any point after the commencement of gaming operations but before the beginning of year three of gaming operations, the Tribe shall dedicate or arrange for the dedication to the City two acres of non-federal land that is owned or under the control of the Tribe or BARWEST, L.L.C, a Michigan limited liability company, and is near the Resort -- for fire and police station use -- on which the City will construct new fire and police stations when, and if, deemed necessary by the City in its sole discretion. The configuration and location of the donated site must be approved by the City.

If the Tribe is the first tribe to commence gaming operations on the Trust Lands or trust parcels adjacent thereto, at the beginning of year eight of gaming operations the Tribe will reimburse the City a sum equal to the lesser of (a) 50 percent of the construction costs for the fire and police stations or (b) \$2 million. Said \$2 million cap shall be increased annually in accordance with the CPI, which increase calculation shall commence as of the month in which this Agreement is executed and end when construction is substantially completed. If another tribe is the first to commence gaming operations on the Trust Lands or trust parcels adjacent to the Trust Lands, the Tribe will reimburse the first tribe to commence Resort operations on the Trust Lands a sum equal to 50 percent of the cost paid by the first tribe for said fire and police stations.

Section 5. Payments to City.

The following method shall be used to make payments to the City.

- A. The Tribe agrees to pay the City amounts equal to the service, development, and impact fees which, if the Trust Lands were not in trust status, would be charged by the City and other local agencies at the time of any and all project development(s) on Trust Lands, which fees consist of payments to the City and the Barstow Fire Protection District. The Tribe will make payments to the Barstow Unified School District equal to the service, development, and impact fees which the School District would receive if the Trust Lands were not in trust status. The amount of payments to the Barstow Fire Protection District is established by an agreement between the City and the

Fire Protection District; the amount of payments to the Barstow Unified School District is established by state statute.

- B. If the City determines that, to expedite inspections and approvals related to development and construction of the Resort, it is necessary to contract out for services, and if the Tribe concurs in that determination, the Tribe shall pay the City, on a monthly basis, for the actual cost of contracted and additional services. Said payments shall not be a condition precedent of commencement of the work contemplated by this subsection B. Said payments shall be made within 30 days of billing.
- C. Where payments are to be made quarterly, the Tribe will pay the City on the thirtieth day of each calendar quarter for the preceding quarter.
- D. Where payments are to be made annually, the Tribe will pay the City on the thirtieth day of each calendar year for which the payment is due.
- E. One-time fees will be due and payable as described in Exhibit C of this Agreement upon the City's approval of the Tribe's construction plans and the City's completion of all building plan checks, as required by Paragraph 2 above.
- F. This Section 5 shall not apply to attorneys fees provided for at Section 17 of this Agreement.
- G. All payments made by the Tribe shall be made payable to the City of Barstow and delivered to the City's Finance Director or authorized designee.

Section 6. Roads and Traffic Circulation.

As part of the environmental process to be conducted pursuant to Section 3 of this Agreement, the Tribe, at its sole expense, will cause to be conducted a traffic impact analysis ("TIA") consistent with the San Bernardino Associated Governments Congestion Management Program requirements to determine the traffic impacts of the Tribe's proposed development(s) and use(s) on Trust Lands. The Tribe will mitigate traffic and circulation impacts identified in the TIA in conformity with City standards as established by the City Engineer. The Tribe agrees to pay all required traffic mitigation fees consistent with the City's fee programs and ordinances and pay for all road improvements that are reasonable and necessary. If another tribe operates a gaming and resort project on land adjacent to the Trust Lands described in Exhibit A attached hereto, the City shall enter into a Municipal Services Agreement with the other tribe providing that the cost of the TIA, the traffic mitigation fees, and road improvements shall be shared equally by the tribes. The Tribe further agrees that, if an increase in traffic is caused by the Tribe's undertaking of other development projects on Trust Lands and additional road improvements or expansions are required, the Tribe shall grant suitable rights-of-way to the City in order to accommodate the necessary road improvements or expansions and make the necessary improvements.

Section 7. Sewer Service.

The Tribe shall provide for sewage disposal for projects developed on Trust Lands by connection to the City's existing sewer collection system. The Tribe shall pay sewer connection fees and monthly sewer service charges, obtain required easements for sewer infrastructure if needed, construct to City sewer infrastructure standards, and pay all costs of constructing sewer infrastructure (even if located outside the Trust Lands) necessary to connect the Resort to existing sewer services. No use shall occur on or off of the Trust Lands until sewer service is completed and inspected pursuant to this Section 7 and Sections 2 and 3 of this Agreement. Any approvals by the City required to implement this Section shall not be unreasonably withheld, and the standards referred to in this Section shall be substantially identical to those applied by the City to other similar users.

If another tribe operates a gaming and resort project on land adjacent to the Trust Lands described in Exhibit A attached hereto, the City shall enter into a Municipal Services Agreement with the other tribe providing that the costs of constructing sewer infrastructure shall be shared equally by the tribes. The tribes shall be

individually responsible for sewer connection fees and monthly sewer service charges associated with the operation of their respective gaming and resort projects.

Section 8. Utilities.

The Tribe shall obtain water and electricity as follows:

- A. Water from the Golden State Water Company.
- B. Electricity from either the Southern California Edison Company or through purchase on the open market. Unless otherwise agreed to by the parties by separate agreement, there shall be no on-site generation of electricity except for emergency power purposes.

Section 9. Solid Waste Disposal.

The Tribe shall utilize the City's contracted solid waste disposal company for all solid waste and recycled materials generated by tribal development projects and pay all fees associated with such use.

Section 10. Employment of City Residents.

Subject to tribal employment preferences, the Tribe shall work in good faith with the City to employ qualified City residents at the Tribe's Resort facilities to the extent permitted by applicable law. The Tribe shall offer training programs to assist City residents in becoming qualified for positions at the Resort to the extent permitted by applicable law.

Section 11. Prohibited Activities.

The Tribe agrees that the following activities shall not be permitted at any time on Trust Lands, and will adopt an ordinance prohibiting them and providing for the enforcement of these prohibitions.

- A. Persons under the age of 21 shall not be allowed to gamble or remain in any room or area in which gaming activities are being conducted. Individuals under the age of 21 may pass through gaming rooms or areas only if they are en route to a non-gaming room or area of the Resort.
- B. Persons under the age of 21 shall not be allowed to purchase, consume, or otherwise possess alcoholic beverages. All alcohol beverage service shall be subject to applicable State Liquor Laws.
- C. Nude entertainment, nude dancing, or venues containing nudity or sexually oriented business activities shall not be permitted on Trust Lands.
- D. Fuel dispensing facilities for motor vehicles shall not be operated on the Trust Lands.

Section 12. Problem Gambling.

The Tribe shall, upon the City's approval of the Tribe's construction plans and the City's completion of all building plan checks, as required by Section 2 above, make a one-time payment to the City of \$40,000 for the establishment of a Problem Gambling Fund. Thereafter, the Tribe will make annual contributions to the City in the amount of \$40,000 to help fund local problem gaming diversion/assistance/counseling programs of the type identified in Exhibit F appended hereto.

Section 13. Impact on City and Local Revenues.

The Tribe and the City acknowledge that, because of the status of the Trust Lands, the City will lose potential tax revenues from the land and the improvements thereon and from certain commercial activities that the

Tribe may conduct on Trust Lands. To compensate the City for the loss of such revenues, the Tribe agrees to make "Gaming Revenue Payments" to the City as defined in, and in accordance with, this Section 13.

The Gaming Revenue Payments are in addition to all other payments provided for in this Agreement. Gaming Revenue Payments to the City shall be four and three tenths (4.3) percent of "Net Win" on Class II and Class III electronic games of chance, as defined in IGRA. "Net Win on Class II and Class III electronic games of chance" is defined as the gross revenues from the operation of all such electronic games of chance, less amounts paid out as, or paid for, prizes or winnings paid to players or to pools dedicated to the payments of those prizes and winnings, and prior to the payment of operating or other expenses, including management fees.

Section 14. Dispute Resolution.

The Parties recognize that a mutually binding and judicially enforceable method of resolving potential disputes that may arise under this Agreement is desirable and beneficial and agree to the following:

- A. **Meet and Confer Process.** In the event the City or the Tribe believes that the other has committed a possible violation of this Agreement, it may request in writing that the Parties meet and confer in good faith for the purpose of attempting to reach a mutually satisfactory resolution of the problem within 10 business days of the date of service of said request, provided that if the complaining Party believes that the problem identified creates a threat to public health or safety, the complaining Party may proceed directly to judicial action as provided in Subsection F below.
- B. **Notice of Disagreement.** If a party is unsatisfied with the results of the meet and confer process, within 10 business days of the date on which the Parties first met, such Party may provide written notice to the other identifying and describing any alleged violation of this Agreement ("Notice of Disagreement"), with particularity, if available, and setting forth the action required to remedy the alleged violation.
- C. **Response to Notice of Disagreement.** Within 10 business days of receipt of service of a Notice of Disagreement, the recipient Party shall provide a written response admitting the allegation(s) set forth in the Notice of Disagreement and, if the truth of the allegations are admitted, setting forth in detail the steps it has taken and/or shall take to cure the violations (Offer to Cure), or denying the allegations of violation (Denial of Violations). The failure of the recipient Party to serve a timely response shall entitle the complaining Party to proceed directly to arbitration, as provided in Subsection E below.
- D. **Response to Offers to Cure/Denial of Violation.**
 1. **Offer to Cure:** Within 10 business days of receiving the recipient Party's Offer to Cure, the recipient Party shall in writing inform the unsatisfied Party either that the recipient Party accepts the Offer to Cure or that it has chosen to invoke the Binding Arbitration Procedures identified in Subsection E below; or
 2. **Denial of Violation:** Within 10 business days of receiving the recipient Party's Denial of Violations, the unsatisfied Party shall in writing inform the recipient Party as to whether it accepts the Denial of Violations or whether it has chosen to invoke the Binding Arbitration Procedures identified in Subsection E below.
- E. **Binding Arbitration Procedures.** Subject to prior compliance with the meet and confer process set out above in Subsection A, and the Notice and Response process in Subsections B and C, and except as provided in Subsection D, either Party may initiate binding arbitration to resolve any dispute arising under this Agreement. The arbitration shall be conducted in accordance with the following procedures:

1. The arbitration shall be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules.
2. The arbitration shall be held in Barstow, California, unless otherwise mutually agreed to in writing. The arbitrator(s) shall be empowered to grant compensatory, equitable, and declaratory relief.
3. If either Party requests an oral hearing, the arbitrator(s) shall set the matter for hearing. Otherwise, the arbitrator(s) shall decide whether to set the matter for hearing.
4. The arbitrator(s)' decision and award, if any, and the reasons therefor, shall be articulated in writing. The resulting award shall be in writing and give the reasons for the decision. Judgment on any award rendered by the arbitrator(s) may be entered in the Superior Court of California for San Bernardino County. The costs and expenses of the American Arbitration Association and the arbitrator(s) shall be shared equally by and between the Parties unless the arbitrator(s) rule(s) otherwise.

F. Expedited Procedure for Threats to Public Safety. If the City or the Tribe reasonably believes that the other's violation of this Agreement has caused or will cause a significant threat to public health or safety, resolution of which cannot be delayed for the time periods otherwise specified in this Section 14, the complaining Party may proceed with litigation consistent with the provision at Section 15 of this Agreement seeking declaratory and injunctive relief to enjoin any such threat.

Section 15. Judicial Review.

The Parties consent to an action for (a) declaratory and injunctive relief pursuant to the provisions of Section 14.F, or (b) enforcement of any award in arbitration pursuant to the provisions of Section 14.E, which actions shall be in the Superior Court of California for San Bernardino County. Service of process in any such judicial proceeding is waived in favor of delivery of court documents by Certified Mail - Return Receipt Requested to the following:

FOR THE TRIBE:
 Tribal Chairperson
 Los Coyotes Band of Cahuilla and Cupeño Indians
 25000 Camino San Ignacio
 Warm Springs, CA 90262
 Telephone: (760) 786-2701
 Facsimile:

FOR THE CITY:
 City Manager
 City of Barstow
 220 E. Mountain View Street, Suite A
 Barstow, CA 92311
 Telephone: (760) 256-3531
 Facsimile: (760) 256-1750

Copy to:
 Joel M. Bernstein, Esquire
 McDermott Will & Emery LLP
 2049 Century Park East, 34th Floor
 Los Angeles, California 90067
 Telephone: (310) 551-9301
 Facsimile: (310) 277-4730

Yvette M. Abich, Esquire
 City Attorney
 Colantuono & Levin, PC
 555 West 5th Street – 31st Floor
 Los Angeles, California 90013
 Telephone: (213) 533-4021
 Facsimile: (213) 533-4191

Section 16. Limited Waiver of Tribal Sovereign Immunity.

The Tribe agrees to waive its sovereign immunity in favor of the City as to any dispute that arises out of this Agreement pursuant to the terms set forth herein for enforcement. With respect to the enforcement of an award of money and/or damages, the arbitrator(s) and/or court will have no authority or jurisdiction to order the execution

against any assets or revenues of the Tribe except Resort income as defined by Generally Accepted Accounting Principles. The Tribe's governing body shall execute a formal Resolution of Limited Waiver of Sovereign Immunity substantially identical to the attached Exhibit D, and the executed Limited Waiver is a condition for the City's execution of this Agreement and shall be made a part hereof.

Section 17. Attorneys Fees.

In the event either party commences an action against the other party which arises out of a default of, breach of, or failure to perform this Agreement or otherwise related to this Agreement, then the Prevailing Party in the action shall be entitled to recover its Litigation Expenses from the other party in addition to whatever relief to which the Prevailing Party may be entitled.

For the purposes of this Agreement, the term "Action" means any lawsuit, court or administrative proceeding (whether of a legal or equitable nature), arbitration or mediation (whether binding or non-binding), or any other alternative dispute resolution procedure, and the filing, recording, or service of any process, notice, claim, lien, or other instrument which is a prerequisite to commencement of the Action.

For the purposes of this Agreement, the term "Litigation Expenses" means all reasonable costs and expenses incurred by the Prevailing Party directly related to an Action, including, but not limited to, court costs, filing, recording, and service fees, copying costs, exhibit production costs, special media rental costs, attorneys' fees, consultant fees, fees for investigators, witness fees (both lay and expert), travel expenses, deposition and transcript costs. For the purposes of this Section, the term "Prevailing Party," shall have the meaning ascribed in Cal. Civ. Proc. Code § 1032(a)(4).

Section 18. Indemnification.

The Tribe agrees to and shall indemnify, defend, protect, and hold harmless the City from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs and expenses (including reasonable attorneys' fees), arising from or in connection with, or caused by any act, omission or negligence of the Tribe or its contractors, licensees, invitees, agents, lessees, servants or employees, related to or in connection with any obligations on the Tribe's part to be performed under the terms of this Agreement, or arising from any negligence of the Tribe, or any such claim or any action or proceeding brought thereon or any action or proceeding filed against the City which challenges the City's approval, execution or delivery of this Agreement on the basis of claims related to CEQA; and in case any action or proceeding be brought against the City (or the City's Representatives) by reason of any such claim, the Tribe upon notice from the City shall have the option to defend the same at the Tribe's expense by counsel reasonably satisfactory to the City. However, in the event that the Tribe does not elect to defend the action or proceeding, the City shall defend the same, at the Tribe's expense, and shall consult with the Tribe during the pendency of the action or proceeding.

Section 19. Support for Trust Application.

As soon as practicable, but no later than 30 days after receipt of the Tribe's written request, the City shall provide correspondence substantially similar to that document attached and described as the "First Letter" in Exhibit E hereto, to the United States Department of Interior, Bureau of Indian Affairs, in support of the Tribe's petition to the United States Department of the Interior requesting that the United States accept trust title to the lands identified in Exhibit A for the benefit of the Tribe, and the City will respond to inquiries about the Tribe's trust application from the Department of the Interior and its Bureau of Indian Affairs in a manner that is consistent with Exhibit E. Upon satisfactory completion of the environmental review of the Resort project as required by NEPA and as contemplated in the Compact, the City shall provide correspondence substantially similar to that document attached and described as the "Second Letter" in Exhibit E hereto.

Section 20. Tribal-City Advisory Committee.

In matters other than issues appropriately arising under the Dispute Resolution provisions of Section 14 of this Agreement, the City and the Tribe agree to establish a permanent committee, to be known as the Tribal-City

Advisory Committee consisting of nine (9) members. The jurisdiction of the Committee shall encompass any matter within the scope of this Agreement including questions related to implementation, and proposals for the amendment, of this Agreement. The Committee will be organized within six months of the date on which the Tribe's Compact is approved by the Secretary of the Interior.

- A. **Composition of Committee.** The Committee shall be composed as follows: [1-2] two members of the City of Barstow City Council or designees, [3] the City Manager or his representative, [4] one representative of a community organization established to address the local impacts of gambling as designated by the City Council, [5-8] four representatives of the Tribe, and [9] a member who shall be selected by the other eight members of the Committee.
- B. **Open Meetings.** Committee meetings shall be open to the public, and Committee members may invite staff and associates, as they deem appropriate, to participate.
- C. **Meeting Times.** The Committee shall meet on a quarterly basis, or more frequently, according to procedures established by the Committee.
- D. **Authority of Committee.** The Committee may make recommendations to the Tribe and the City, including amendments to this Agreement, which both Parties shall consider before taking any action on a Committee recommendation.

Section 21. Development Projects.

The Parties understand and agree that the Tribe may in the future undertake other development projects on Trust Lands. In order to preserve their good relations and in the best interests of the surrounding community, the Tribe agrees to follow the process and procedures outlined in Sections 2 and 3 of this Agreement before undertaking any construction on Trust Lands which requires a permit under Title 15 of the Barstow Municipal Code. Nothing in this Agreement is intended to subject the Tribe to criminal jurisdiction beyond that otherwise provided for in existing law or in this Agreement.

Section 22. Amendments.

This Agreement may be amended in writing by the Parties. This Agreement must be amended prior to the Tribe's acquisition of federal trust status for any land within the City not identified in Exhibit A. The Parties will meet annually to review this Agreement and the Parties' performance of their obligations under it. To the extent that either Party believes that the Agreement should be amended, the Parties agree to negotiate on such amendments in good faith in order to further the objectives of this Agreement.

Section 23. No Third Party Beneficiaries.

This Agreement is not intended to, and shall not be construed to, create any right on the part of a third party to bring an action to enforce any of its terms.

Section 24. Term.

This Agreement shall become effective upon its execution by the Parties hereto and shall continue during the period of time that business operations related to the Resort are conducted on the Trust Lands, *provided* that, if the Tribe is informed by the Secretary of the Interior that the United States will not take the land into trust for the purposes of allowing the Tribe to conduct gaming activities thereon then this Agreement shall terminate 30 days after all appeals related to such a decision have been exhausted.

Prior to the termination of Resort operations on the Trust Lands, either Party may request the other Party to enter into good faith negotiations to extend this Agreement or enter into a new Agreement. If the parties have not agreed to extend the date of this Agreement nor entered into a new Agreement by the termination of Resort

operations on the Trust Property, this Agreement will automatically be extended for one additional year, provided the Parties agree to submit to binding arbitration for the purposes of securing a new Agreement.

Section 25. General Provisions.

- A. **Condition of Agreement.** A condition of this Agreement is the participation of LCB BARWEST, L.L.C., a Michigan limited liability company, as the developer and manager of the Resort, during the term of the initial development and initial management agreement entered into by the Tribe, provided that LCB BARWEST L.L.C. acts in accordance with IGRA and the rules and regulations of the NIGC and obtains all required regulatory approvals, and provided further that if LCB BARWEST L.L.C. does not participate as developer or manager, any other developer or manager must be approved by the City, which approval shall not be unreasonably withheld.
- B. **Completion Date.** The Tribe shall use its best efforts to complete and open the Resort within 24 months following the obtaining of all necessary permits, licenses and approvals prerequisite to the commencement of construction from all federal, state and local authorities.
- C. **Tribal Requirements.** The Tribe shall be responsible for the following at the Trust Lands:
1. Assurance that its contract partners, including all developers and gaming managers, have the capacity to complete and operate all development projects;
 2. Maintenance of property and all development projects;
 3. Management of all development projects; and
 4. Transfer to the City of such easements and other interests in real property as are necessary for the provision of municipal services to the Trust Lands by the City and other local government service providers.
- D. **Annual Verification of Financial Statements.** The Tribe will provide the City with the opportunity to review annual audited financial statements performed in accordance with Generally Accepted Accounting Principles. The City may read, but may not record, copy or reproduce any portion of the audited financial statements, provided, however, that the City may record the components by which the "Net Win on Class II and Class III electronic games of chance" (as defined in Section 13) is calculated. The City shall, consistent with State law, keep such information confidential.

Section 26. Approval by the Department of the Interior.

The parties will submit this Agreement to the Department of the Interior for either (a) approval pursuant to 25 U.S.C. § 81, or (b) a written response from the Department of the Interior that this Agreement does not require approval under 25 U.S.C. § 81 to be enforceable.

Section 27. Merger.

This First Amended Municipal Services Agreement is the entire agreement between the Parties and supersedes all previous agreements between the Tribe and the City, and all such previous agreements are void. This Agreement may only be amended in writing with the approval of the Tribe's Tribal Council and the Barstow City Council.

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WHEREFORE, IN WITNESS HEREOF, the Parties hereby execute and enter into this Agreement with the intent to be bound thereby through their authorized representatives, whose signatures are affixed below.

LOS COYOTES BAND OF CAHUILLA AND CUPEÑO INDIANS

Catherine Saubel
By: Catherine Siva Saubel
Tribal Spokeswoman

Date: 8-13-2006

CITY OF BARSTOW

Lawrence E. Dale
By: Lawrence E. Dale
Mayor

Date: 08/21/06



APPROVED AS TO FORM:

By: Yvette M. Abich
Yvette M. Abich
City Attorney

Attest: JoAnne V. Cousino
JoAnne Cousino, City Clerk
Secretary

The foregoing instrument is a correct copy of the original on file in the office.

ATTE Aug 23, 2006

JoAnne V. Cousino
City Clerk, Barstow, California

By: JoAnne V. Cousino

EXHIBIT A

That real property located in the City of Barstow, County of San Bernardino, State of California, comprising approximately 23.1 acres, which has the following legal description:

Parcels 2 through 4 of Parcel Map No. 14373, as per map recorded in Book 170, Pages 5 and 6, of Parcel Maps, San Bernardino County Recorder, and currently identified as Assessor's Parcels Number 0428-171-66, 0428-171-67 and 0428-171-68, as shown on Exhibit A-1 attached hereto and as shown on Exhibit D of the State Gaming Compact.

EXHIBIT B

The provisions of this Agreement shall require the Tribe to develop a first-class high-quality destination resort including hotel(s), restaurant(s), hospitality services and a minimum 50,000 square foot casino for Class III Indian gaming, containing a number of slot machines, table games and other gaming devices or games not to exceed the maximum to be allowed under the Tribal-State Gaming Compact between the Tribe and the State of California ("Resort"). The Tribe may elect to also offer Class II gaming, as defined in IGRA, and this MSA also shall apply to such gaming.

In addition, the following uses may be developed in conjunction with the Resort specifically authorized under this Agreement. All uses shall be supportive uses to the gaming facility and shall include but are not limited to:

1. Hotel/Motel
2. Recreational Vehicle Park
3. Shopping Mall
4. Theater (motion picture or live performances)
5. Themes or Amusement Park
6. Water Park
7. Small-scale Amusement Park, including video arcades and miniature golf
8. Bowling Center
9. Restaurants/Coffee Shops/Snack Bars
10. Night Clubs or Bars (includes live entertainment)
11. Entertainment Venues (stadiums or arenas, including rodeo arenas)

Except for the explicit prohibition of fuel dispensing stations for motor vehicles, if a use not listed above is proposed, and the City and Tribe cannot agree that the use is gaming-related under Section 1 of this Agreement, or is similar to the uses listed above, then the parties shall resolve the issue under the dispute resolution provisions in Section 14 of this Agreement.

EXHIBIT C

ONE TIME FEES TO BE PAID BY THE TRIBE:

1. The Los Coyotes Band of Cahuilla and Cupeño Indians shall pay for the actual attorney fees and expenses and all other costs incurred by the City in the development of the First Amended Municipal Services Agreement between the City of Barstow and the Tribe.
2. Actual costs for all development and impact fees charged by the City and other local agencies for project development on or off Trust lands.
3. The tribal share of construction costs of police and fire structures as provided for at Section 4.C of this Agreement.
4. The cost of an Emergency Medical Services Response Vehicle, as provided in Section 4.B.1. of this Agreement.
5. If a structure exceeding four stories in height is constructed by the Tribe on Trust Lands, the Tribe will pay one-half (1/2) of the actual costs of training Fire Department personnel to fight high-rise fires, and the Fire Department estimates the cost of such training would be \$47,000, as provided in Section 4.B.3. of this Agreement.
6. The Tribe shall pay the one-time fee described in this Exhibit C at paragraph 5 in accordance with Section 5.E of this Agreement.



Los Coyotes Band of Indians

P.O. Box 189 • Warner Springs, CA 92086
(760) 782-0711 • Fax (760) 782-2701



EXHIBIT D

LOS COYOTES BAND OF CAHUILLA AND CUPEÑO INDIANS

RESOLUTION NO.081306

WHEREAS, The Los Coyotes Band of Cahuilla and Cupeño Indians is a federally recognized Tribe, governed by its custom and traditions, and

WHEREAS, According to the Tribe's custom and traditions, the General Council has all legislative authority, and the Spokeswoman is authorized to carry out the decisions made by the General Council, and

WHEREAS, The General Council has reviewed the First Amended Municipal Services Agreement ("Agreement") between the Tribe, and the City of Barstow ("City");

WHEREAS, The General Council, having considered the matter in accordance with the custom and traditions of the Tribe agrees that the approval of the Agreement with the City would be in the best interest of the Tribe in order to move forward to conduct gaming within the City of Barstow; and

WHEREAS, The Tribe recognizes its need to exercise its sovereign right to provide a limited waiver of sovereign immunity with regard to disputes arising under or in connection with the Agreement, to consent to the jurisdiction of Approved Courts and Arbitration, as provided for in the Agreement.

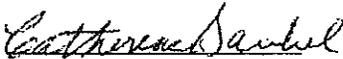
NOW, THEREFORE BE IT RESOLVED, the General Council ratifies the Spokeswoman's execution and delivery of the Agreement to the appropriate City Officials;

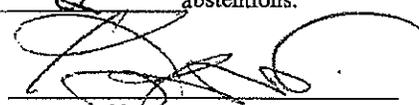
BE IT FURTHER RESOLVED, the General Council hereby waives the sovereign immunity of the Tribe in favor of the City as to disputes arising under, or in connection with, the Agreement, and consents to the jurisdiction of courts and arbitration, as provided in the Agreement;

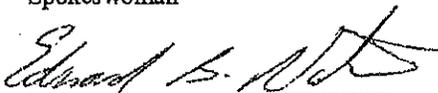
BE IT FURTHER RESOLVED, any material amendments to the First Amended Municipal Services Agreement shall be brought back to the General Council for consideration and approval.

CERTIFICATION

On August 13, 2006, at a duly called General Council meeting held by the Los Coyotes Band of Cahuilla and Cupeño Indians at which a quorum was present, the foregoing resolution was presented and adopted by a vote of 34 in favor, 2 opposed, and 0 abstentions.


Catherine Siva Saubel
Spokeswoman


Witnessed by
Committee Member


Witnessed by Committee Member

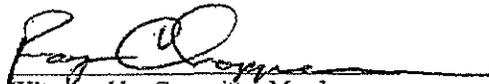

Witnessed by Committee Member

EXHIBIT E

The Parties agree that the City will send letters supporting the Tribe's fee-to-trust application as follows (though these may at a later date be modified by mutual agreement of the Parties):

FIRST LETTER – To be provided as soon as is practicable.

The Honorable Dirk Kempthorne
Secretary
United States Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Secretary Kempthorne:

It is with great pleasure that I, on behalf of the City Council of the City of Barstow, California, provide this preliminary letter of support for the fee-to-trust application that has been submitted by the Los Coyotes Band of Cahuilla and Cupeño Indians ("Tribe") regarding land located here in the City of Barstow.

Based on information currently available to us we believe that development of an Indian casino in the City of Barstow will provide very significant benefits to our local community. [Insert appropriate documentation available at the time of writing evidencing City support, and reference to meetings of the City Council or other forum in which consultation with the public has been conducted.]

Further, we have worked closely with the Los Coyotes Band of Cahuilla and Cupeño Indians as it has developed its proposal to develop a gaming facility here, and we have reached a mutually agreeable Municipal Services Agreement that we believe will benefit both parties. That Agreement provides a workable framework on which the relationship between the City and the Tribe can continue to be effective and mutually beneficial into the future. A copy of that Agreement is also enclosed.

I note that the City provides here only preliminary support for the Tribe's proposed project. This is because the environmental review of the potential environmental impacts of the Resort project and potential mitigation measures as required by the National Environmental Policy Act and as contemplated in the Tribal-State Compact between the State of California and the Tribe has not been completed. It is our intention to make a final determination as to whether to support the Tribe's project once this environmental review has been completed, and to write to you again to confirm or modify our position according to the results of that review.

If you have any questions about the City's support for the Tribe's fee-to-trust application and the proposed gaming facility related thereto, please do not hesitate to contact me at (760) 256-3531.

Sincerely,

Lawrence Dale
Mayor

cc: The Hon. Arnold Schwarzenegger, Governor of the State of California
The Hon. James Cason, Associate Deputy Secretary of the Interior
Mr. Clay Gregory, Acting Regional Director, Pacific Region, Bureau of Indian Affairs

SECOND LETTER: This letter is to be provided within a reasonable period of time after completion of the NEPA and Tribal EIR review, and to be expanded with additional supporting information regarding the “not detrimental to the surrounding community” component of the Secretary of the Interior’s two-part determination should such information become available.

The Honorable Dirk Kempthorne
Secretary
United States Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Secretary Kempthorne:

Speaking on behalf of the City of Barstow I wrote to you on _____, 2006 to express the City’s preliminary support for the fee-to-trust application submitted by the Los Coyotes Band of Cahuilla and Cupeño Indians (“Tribe”) regarding lands located in the City of Barstow. I am providing this letter asking that it be included in the record to supplement my earlier correspondence on this subject.

As you may recall, the City’s support for the Tribe’s proposed project was conditioned on the City’s review of environmental analyses to be conducted for the Tribe’s gaming facility as required by the National Environmental Policy Act and as contemplated in the Tribal-State Compact between the State of California and the Tribe.

Our careful review of the [environmental documentation] (including recommended mitigation measures), coupled with the Tribe’s agreement to implement those mitigation measures (as evidenced in the First Amended Municipal Services Agreement between the City and the Tribe provided to you in earlier correspondence), allows the City to give its full and unconditional support to the Tribe’s fee-to-trust petition.

We understand that federal law requires that you make a determination as to whether the Tribe’s proposed trust acquisition is “detrimental to the surrounding community.” Not only do we not view the proposed Los Coyotes Band of Cahuilla and Cupeño Indians facility as “not detrimental”—to the contrary, we view its development in Barstow as an important, affirmative step toward the advancement of meaningful economic development in our community. [Insert description of and specific references to documentation evidencing local support, and highlighting the public meetings providing opportunity for community comment.]

In sum, as the most senior elected official in the City of Barstow, writing on behalf of the people of this City, I respectfully request that the Department of the Interior find that the acquisition of trust title to the Tribe’s land in Barstow for gaming purposes is “not detrimental” to our community. Indeed, it is our great hope that the Department will further find that acquisition of trust title is in the best interest of the Tribe, and that it will forward that positive two-part determination to our Governor for his review and concurrence.

If you have any questions or concerns, please do not hesitate to contact me at (760) 256-3531.

Sincerely,

Lawrence Dale
Mayor

cc: The Hon. Arnold Schwarzenegger, Governor of the State of California
The Hon. James Cason, Associate Deputy Secretary of the Interior
Mr. Clay Gregory, Acting Regional Director, Pacific Region, Bureau of Indian Affairs

EXHIBIT F

Problem Gaming Program Description, City of Barstow

Provided by: The California Council on Problem Gambling

Service to be Provided: Programs to address the issue of problem gambling through training, education, and awareness of the crisis help line.

PROJECT ELEMENTS	ANNUAL COSTS
Public Awareness	
Radio PSA Campaign (Help Line Promotion)	\$20,000
Free educational materials, posters & brochures distributed to County health care and social service agencies, senior centers, youth centers and other community organizations.	\$2,000
Awareness Seminars for Professionals consisting of five (5) seminars to be held annually at various locations providing a general overview of problem gambling, behavioral indicators and resources for help. Seminars would be open to professionals from local volunteer organizations such as Parent Teacher Associations, Keep Kids Safe, and other local affiliates of national non-profits, as well as County officials and health and human service agencies, senior centers, youth centers, ministries, etc. Instructors will be leaders in the field of treatment, prevention and education, holding masters' degrees or better.	\$15,000
Prevention Education Consisting of on-campus workshops for students at the two junior high schools, one high school, one continuation school and the Barstow Community College.	\$6,000
Red-Ribbon week	\$2,500
TOTAL (Tribe will contribute \$40,000 annually to the Fund; City may contribute \$5,500 annually to the Fund.)	\$45,500

EXHIBIT G

Scope of Law Enforcement Services

This is Exhibit G to the First Amended Municipal Services Agreement ("Agreement") between the City of Barstow ("City") and the Los Coyotes Band of Cahuilla and Cupeño Indians ("Tribe"), and the Parties to the Agreement agree that the provisions hereof are a part of the Agreement.

The City shall enforce state penal law and City penal ordinances within the boundaries of the tribal land as described in Exhibit A to the Agreement to the full extent that City is authorized under California law, the Tribe's Class III Gaming Compact with the State of California and this Agreement to exercise its police power.

The City may enforce or assist in the enforcement of federal law on tribal Trust Lands within the City to the extent that City may be permitted to do so under federal law. In order to permit the City to fulfill its responsibilities under this Agreement, all City public safety officers shall be accorded free access to all spaces open to the public within any gaming facility and/or surrounding structures on the tribal land for purposes of maintaining public peace and order and to allow for the enforcement of applicable criminal laws of the federal government, state and City. Personnel employed by the tribal gaming operation, including security personnel of the gaming facility and tribal law enforcement personnel, shall, for such purposes, provide City public safety officers access to those public spaces within the gaming facility as may be necessary to permit the City to fulfill its duties under this Agreement, and may consent to access to non-public space. Nothing in this Agreement is intended to restrict access to non-public space if exigent circumstances require access.

The City shall be permitted entrance to any public place on the tribal land described in Exhibit A pursuant to the City's general police powers for any lawful purpose. City public safety officers, if deputized by the Tribe for such a purpose, may likewise arrest any Indian for violation of tribal law occurring on Trust Lands in which event said individual shall be held and detained by the public safety officer until a tribal police officer takes custody. The City shall promptly notify the tribal security office of any effort to arrest or detain an individual on Trust Lands.

The cost for Law Enforcement support found in this Agreement does not include the cost of performing background checks or identification procedure and identification cards that may be required to be issued depending on state legislative action. If this service is required of the City, additional fees will be assessed in the same manner as for other entities requiring such service. The Tribe shall contract directly with the County of San Bernardino for prosecutorial and defense services (District Attorney/Public Defender) and costs for such services shall be paid by the Tribe directly to the County. If the Tribe is unable to reach terms with the County for prosecution and defense services, then the Parties shall conduct further negotiations regarding provision of such services to the Tribe. Failure of the Parties to reach agreement shall constitute grounds for invocation of the Dispute Resolution provisions of this Agreement. Notwithstanding any other provision of this Agreement, gaming operations shall not commence at the Resort until resolution and agreement of the Parties concerning the provision of prosecutorial and defense services.

New Fire and Police Stations.

If the Tribe is the first tribe to commence gaming operations on the Trust Lands or trust parcels adjacent thereto, as soon as practicable when requested by the City, which request may be made at any point after the commencement of gaming operations but before the beginning of year three of gaming operations, the Tribe shall dedicate or arrange for the dedication to the City two acres of non-federal land that is owned or under the control of the Tribe or BARWEST, L.L.C, a Michigan limited liability company, and is near the Resort -- for fire and police station use -- on which the City will construct new fire and police stations when, and if, deemed necessary by the City in its sole discretion. The configuration and location of the donated site must be approved by the City.

If the Tribe is the first tribe to commence gaming operations on the Trust Lands or trust parcels adjacent thereto, at the beginning of year eight of gaming operations the Tribe will reimburse the City a sum equal to the lesser of (a) 50 percent of the construction costs for the fire and police stations or (b) \$2 million. Said \$2 million cap shall be increased annually in accordance with the CPI, which increase calculation shall commence as of the month in which this Agreement is executed and end when construction is substantially completed. If another tribe is the first to

commence gaming operations on the Trust Lands or trust parcels adjacent to the Trust Lands, the Tribe will reimburse the first tribe to commence Resort operations on the Trust Lands a sum equal to 50 percent of the cost paid by the first tribe for said fire and police stations.

Matters Incidental to the Performance of Any Law Enforcement.

The standards of performance, training, discipline and other matters incidental to the performance of any law enforcement services rendered under this Agreement shall be determined solely by the City or agency involved in accordance with applicable laws and regulations.

If the Tribe creates a tribal police or security force which is assigned to the Resort, the Barstow Police Department will assist the Tribe with the cross training required to provide a smooth and effective working relationship, and will assist the Tribe as needed to review written policies and guidelines for tribal police and security personnel as well as expectations for the tribal personnel to interface effectively and smoothly with the operations of the Barstow Police Department. If cross training of tribal police and security personnel is conducted by the Barstow Police Department, then fees will be assessed for such training on the basis of hourly charges calculated on the basis of the salary of officers involved in such training. In any event, the level of training and performance standards of the tribal police and security personnel shall be equal to those imposed by the Barstow Police Department on its law enforcement personnel.

“Special Events” are those events which take place at the Resort for which there is a reasonable expectation that there would be a need for an increase in the amount, scope of level of necessary police, traffic control, and crowd control which is above the normal deployment of law enforcement personnel which would normally be required without such event. Should Special Events be held at the Resort, the Tribe and the Barstow Police Department will negotiate separate agreements for each event to provide adequate police staffing necessary to provide coverage for such Special Event and reasonable compensation therefor.

EXHIBIT H

Scope of Barstow Fire Protection District Services

This is Exhibit H to the First Amended Municipal Services Agreement ("Agreement") between the City of Barstow ("City") and the Los Coyotes Band of Cahuilla and Cupeño Indians ("Tribe"), and the Parties to the Agreement agree that the provisions hereof are a part of the Agreement.

Fire Protection Services.

The Barstow Fire Protection District will be the primary fire protection agency serving the Resort and all facilities located thereon. The tribal property shall receive the same level of fire protection as is provided to any other resident or business within the City.

The Barstow Fire Protection District will relocate fire fighting equipment to Station 363 and then to any new fire station, in accordance with the provisions of Section 4.B of the Agreement.

Standards of performance, training, discipline and other matters incidental to the performance of any fire service related services.

The standards of performance, training, discipline and other matters incidental to the performance of any fire service related services rendered under this Agreement shall be determined solely by the Barstow Fire Protection District.

If the Tribe creates a tribal fire and/or emergency medical services ("EMS") unit which is assigned to the Resort, the Barstow Fire Protection District will assist the Tribe with the cross training required to provide a smooth and effective working relationship, and will assist the Tribe as needed to review written policies and guidelines for tribal fire and EMS personnel as well as expectations for the tribal personnel to interface effectively and smoothly with the operations of the Barstow Fire Protection District. If cross training of tribal fire and EMS personnel is conducted by the Barstow Fire Protection District, then fees will be assessed for such training on the basis of hourly charges calculated on the basis of the salary of Barstow Fire Protection District personnel involved in such training.

Emergency Medical Services.

The Parties recognize that significant fire protection and emergency response services will be required by the Tribe's Resort to be constructed within the City on tribal Trust Lands. The Barstow Fire Protection District customarily is the first responder for Emergency Medical Services ("EMS") although it is understood that the Tribe intends to have tribal EMS personnel on duty at the Resort, in which cased tribal EMS personnel will be the first responder. However, in order to serve the Resort and the anticipated needs for EMS response at that facility, the City will purchase a fully equipped Emergency Medical Services Response Vehicle and house it at Station 363 located at 2600 West Main Street, Barstow, CA, for the first two years of Resort operations in accordance with the provisions of Section 4.B.1 of the Agreement.

When the City constructs a new fire station as discussed at Section 4.C of the Agreement, the EMS Response Vehicle will be moved to that station.

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